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N A R U C

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March 2, 1999

The Honorable William Kennard
Office of the Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: NARUC's Request for a Stay of the FCC's De-Averaging Rules

Ex Parte Comments: Two Originals filed in the following docket: *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (CC Docket No. 96-98)

Dear Chairman Kennard,

It is my understanding that the FCC may act very soon to address several August 1996 rules that will be re-instated as a result of the recent January 25, 1999 Supreme Court decision in *Iowa Utilities Board* case. As you know, since passage of the Act, the States and the FCC have worked together on a broad range of issues. *NARUC believes the Court's decision, if anything, increases the need for cooperative FCC and State action.* As I'm sure you are aware, at our recent 1999 Winter Meetings in Washington, DC, our Board of Directors approved a resolution which specifically requests that the FCC:

- *Expeditiously establish a new deadline for States that have not implemented dialing parity;*
- *Clarify that States that implement dialing parity have the authority to condition customer default to the incumbent local service provider on the requirement that customers have a reasonable opportunity to change among all service providers; and*
- *Expeditiously stay its minimum three-zone rule pending further evaluation in the context of the FCC and State implementation of the Act and related issues for those States that have not taken such action.*

Please consider this *ex parte* as NARUC's formal request for an expeditious FCC response to these requests.

As several of the FCC's August 1996 rules were essentially vacated by the 8th Circuit in 1997, the States acted in these areas in accordance with the 1996 legislation's mandates – not the stayed FCC rules. For States that have not taken independent action that complies with the FCC rules, it is clear that some sort of transition period is warranted to allow them bring their rules into compliance. Indeed, with the benefits of the last three years of post-Act experience, the FCC *may* wish to re-evaluate, e.g., the requirement for a minimum of 3 geographically de-averaged pricing zones.

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Our February 24, 1999 resolution points out, that in keeping with Congress' twin goals of introducing competition for the benefit of the nation's consumers and maintaining universal service, the FCC and the States should work together to:

- Minimize the prospects for disruption via appeals/collateral attacks upon the myriad of existing State commission pricing orders and related-approved arbitrations that, either specifically comply with the precise text of the original August 1996 order, or are otherwise in substantial compliance with the FCC's rules;

- Minimize the prospects of disruption and attendant customer confusion though collateral attacks on State orders implementing intraLATA dialing parity, in the 39 jurisdictions that have done so, and provide a reasonable time for the 11 jurisdictions that have not to bring their State's ILECs into compliance with the FCC's rules; and, finally

- At a minimum, stay the efficacy of the minimum 3 zone rule until related State and Federal universal service programs are fully implemented.

The Supreme Court has presented the FCC with a unique opportunity. When the FCC first drafted these rules, it acted with no empirical data. Since the rules were stayed in 1996, the State "laboratories" have generated a significant data on the real world impact of the precise implementation of some of the vacated rules, and in other circumstances, variations of those rules. Now the FCC has the opportunity, if it chooses, to re-examine certain of its initial policy calls in the light of *actual* empirical data. For example, New York, generally acknowledged as one of the most pro-competitive jurisdictions in the country, has only required 2 deaveraged zones – not the minimum three required by the FCC's rules. Several other jurisdictions – some relying upon the FCC's original determinations - have chosen to use three zones. Other jurisdictions are still attempting to complete related proceedings concerning, e.g., retail pricing and universal service before tackling the deaveraging issue.

Whatever, the FCC's final policy choice on the number of needed zones, the Commission should stay the efficacy of that rule until related State and Federal proceedings are fully implemented. In addition, when considering the length of any stay, the Commission should also recall that most States lack the staff and monetary resources of an agency the size of the FCC. Moreover, in addition to routine State duties imposed by both the 1996 legislation and State laws, the staffs of States that are currently not in compliance with these FCC rules will be required to accelerate related proceedings dealing with universal service and retail rate restructuring at the same time they are opening proceedings to implement de-averaged zones.

If you have any questions about this correspondence, please do not hesitate to contact me at 202.898.2207 or, via e-mail at **jramsay@naruc.org**.

Sincerely,

James Bradford Ramsay
NARUC Assistant General Counsel

cc: Ms. Kathy Brown, Chief of Staff, Office of the Chairman
Mr. Tom Power, Common Carrier Advisor to Chairman Kennard

Resolution Concerning Cooperative Federalism in the Wake of the January 25, *1999* *Iowa Utilities Board vs. AT&T* Supreme Court Decision

WHEREAS, A critical and key component for successful implementation of the Telecommunications Act of 1996 (Act) has always been significant coordination and cooperation between State and U.S. territorial utility (State) commissions and the Federal Communications Commission (FCC); and

WHEREAS, Since passage of the Act, the State Commissions and U.S. Territories and the FCC have worked together on a broad range of issues, and have benefited from one another's differing perspectives; and

WHEREAS, On January 25, 1999, several significant FCC rules were specifically upheld, including those requiring implementation of dialing parity, a minimum of three geographically de-averaged pricing zones, and

WHEREAS, The Supreme Court also specifically upheld the FCC's authority to impose pricing guidelines binding on the States in the context of Section 251-2 arbitrations; but remanded the substantive validity of those rules back to the Eight Circuit for a decision on the merits; and

WHEREAS, This decision, if anything, increases the need for cooperative FCC and State commission action to

- Minimize the prospects for disruption via appeals/collateral attacks upon the myriad of existing State commission pricing orders and related-approved arbitrations that, either specifically comply with the precise text of the original August 1996 order, or are otherwise in substantial compliance with the FCC's rules – orders, that have, in many instances, already been approved by Federal District Courts as being in compliance with the Act's goals, and

- Minimize the prospects of disruption and attendant customer confusion though collateral attacks on State commission orders implementing intraLATA dialing parity, in the 39 jurisdictions that have done so, and provide a reasonable time for the 11 jurisdictions that have not to bring their State's ILECs into compliance with the FCC's rules;

- With the benefits of the last three years of post-Act experience, re-evaluate the requirement for a minimum of 3 geographically de-averaged pricing zones, at a minimum, staying the efficacy of that rule until related State and Federal universal service programs are fully implemented;

- Continue to maximize the benefit of State-level diversity and innovation from Congress's cooperative federalism scheme; now therefore be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners (NARUC), assembled at its 1999 Winter Meeting in Washington, D.C. congratulate the FCC on its recent victory in the Supreme Court and applaud the outreach from every level of the agency to the States seeking input on how to manage the recent re-vitalization of rules that have be stayed for almost three years; and be it further

RESOLVED, That the NARUC opposes any legal challenge to forward-looking cost methodologies; and be it further

RESOLVED, With respect to toll dialing parity, the FCC should

- Expeditiously establish a new deadline for States that have not implemented dialing parity; and

- Clarify that States that implement dialing parity have the authority to condition customer default to the incumbent local service provider on the requirement that customers have a reasonable opportunity to change among all service providers; and be it further

RESOLVED, That the FCC should expeditiously stay its minimum three zone rule pending further evaluation in the context of the FCC and State implementation of the Act and related issues for those States that have not taken such action; and be it further

RESOLVED, That the NARUC General Counsel be directed to take any action deemed necessary to carry out the intent of this resolution.

Sponsored by the Committee on Telecommunications
Adopted February 24, 1999